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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44168
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2015-7815
)	
JOHN KIM BAKER,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

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STATEMENT OF THE CASE

Nature Of The Case

John Kim Baker appeals from his conviction for felony eluding. On appeal he challenges the denial of his motion to dismiss the charge on double jeopardy grounds.

Statement Of The Facts And Course Of The Proceedings

The state charged Baker with felony eluding and a persistent violator enhancement, alleging that Baker

on or about the 31st day of March 2015, in the County of Ada, State of Idaho, did operate a motor vehicle, to-wit: a black 1998 Buick at or about throughout the streets of Boise and willfully fled and/or eluded a pursuing police vehicle after being given a visual signal and/or audible signal to stop, and in so doing drove his vehicle in a manner as to endanger or be likely to endanger the property of another or the person of another, to-wit: by driving at a high rate of speed, approximately one hundred ten (110) miles per hour in a reckless and dangerous manner driving into oncoming lanes of travel.

(R., pp. 49-50, 105-06.) Baker moved to dismiss the charge, asserting it violated his rights against double jeopardy because he had also been convicted of misdemeanor eluding in Elmore County. (R., pp. 79-85, 93-97; see also 2/25/16 Tr.)

The district court found that the Ada County charge of felony eluding arose from officers trying to stop Baker's car in relation to an aggravated assault. (3/4/16 Tr., p. 2, L. 9 – p. 4, L. 10.) Baker fled from officers in the City of Boise, and at one point reached speeds of over 110 miles per hour in a 65 mile per hour zone on the interstate. (3/4/16 Tr., p. 4, L. 9 – p. 5, L. 16.) The police terminated

the pursuit while it was still in Ada County. (3/4/16 Tr., p. 5, L. 17 – p. 6, L. 10.) Officers in Elmore County, in response to the pursuit, had covered exits 90 and 95 in that county. (3/4/16 Tr., p. 6, Ls. 11-25.)

And at those exits there is testimony that their lights may have been deployed or some lighting feature would have been deployed; however, none of the Elmore officers ever actually saw the suspect vehicle and they never reported any significant erratic driving behavior or excessive speed behavior and never did contact the suspect vehicle while they were awaiting at these exits 90 and 95.

(3/4/16 Tr., p. 7, Ls. 1-8.) About 37 minutes after the pursuit ended in Ada County the Elmore County officers stood down and “resumed their normal patrol activities.” (3/4/16 Tr., p. 7, Ls. 9-18.)

About one and one-half hours later Elmore County officers were advised of a report that Baker’s car was “somewhere between Mountain Home and Boise” and Baker “was making phone calls stating that he would provoke an incident with officers and he would provoke officers to shoot him.” (3/4/16 Tr., p. 7, L. 19 – p. 8, L. 1.) Elmore County officers began attempting to locate Baker’s vehicle. (3/4/16 Tr., p. 8, Ls. 2-9.) When an officer did locate the vehicle stopped at the side of the interstate, he pulled in behind it and activated his lights. (3/4/16 Tr., p. 8, Ls. 10-21.) Baker then fled by driving on the interstate, albeit at speeds far below the posted speed limits. (3/4/16 Tr., p. 8, L. 21 – p. 9, L. 5.) Officers succeeded in stopping Baker approximately two miles later by deploying spike strips. (3/4/16 Tr., p. 9, Ls. 6-10.) Elmore County officers arrested Baker and charged him with, among other things, misdemeanor eluding an officer, and Baker pled guilty to that charge. (3/4/16 Tr., p. 9, Ls. 11-13; p. 10, Ls. 2-6.)

It does appear from this evidence that for the entire period between one o'clock in the morning and 2:30 in the morning, there was no contact between any law enforcement agency and the defendant's vehicle. His whereabouts and the -- his conduct in that time is entirely unknown to law enforcement.

(3/4/16 Tr., p. 9, L. 21 – p. 10, L. 1.)

The district court concluded that the Elmore County misdemeanor eluding conviction was for a different offense that occurred at a different place and a different time than the Ada County felony eluding charge. (3/4/16 Tr., p. 11, L. 15 – p. 12, L. 9.)

In this case as I look at it, the Ada County incident is a completed eluding event. It begins with the officer activating his lights and sirens. It ends when the officers turned off their lights and sirens and discontinued the pursuit in the vicinity of the Black Cat [sic—Creek] exit and, certainly, by the time the officers had staged at the Stagestop.

At that point no officer was following the defendant. There was no opportunity for the defendant to elude because there -- 1 police weren't following him; secondly there was no visual or audible signal to stop after the officers discontinued the pursuit.

(3/4/16 Tr., p. 13, Ls. 10-21.) The second attempt to stop Baker over two hours later resulted in "a separate and distinct set of eluding facts." (3/4/16 Tr., p. 14, Ls. 12-24.) "There is a significant difference in time; there's a significant difference in location; and there's a significant difference in the nature of the activity." (3/4/16 Tr., p. p. 15, Ls. 3-6.) Finding no double jeopardy bar to the felony eluding charge, the district court denied the motion to dismiss. (3/4/16 Tr., p. 15, L. 18 – p. 16, L. 7.)

Baker then entered a guilty plea to the felony eluding charge and the enhancement, preserving his right to challenge the denial of his motion to

dismiss on appeal. (3/4/16 Tr., p. 19, L. 4 – p. 25, L. 25; R., pp. 104, 109-10.)

Baker filed a notice of appeal timely from entry of the judgment. (R., pp. 116, 121.)

ISSUE

Baker states the issue on appeal as:

Did the district court err in denying Mr. Baker's motion to dismiss?

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Baker failed to show error in the district court's determination that prosecuting Baker in Ada County for an eluding that was significantly different in time, place and nature from Baker's Elmore County eluding conviction did not violate Baker's right against double jeopardy?

ARGUMENT

Baker Has Failed To Show Error In The District Court's Determination That Prosecuting Baker In Ada County For An Eluding That Was Significantly Different In Time, Place And Nature From Baker's Elmore County Eluding Conviction Did Not Violate Baker's Right Against Double Jeopardy

A. Introduction

The district court concluded that prosecuting Baker for felony eluding in Ada County did not violate double jeopardy because the Elmore County eluding conviction was for acts significantly different in time, location and nature. (3/4/16 Tr., p. 2, L. 9 – p. 16, L. 7.) Baker contends: “The acts Mr. Baker committed on March 31, 2015, when he eluded police officers in Ada County and Elmore County over the course of three hours, were not separate events, but a single continuing offense.” (Appellant’s brief, p. 6.) Application of the relevant legal standards shows this argument to be without merit.

B. Standard Of Review

Whether a defendant’s prosecution complies with the constitutional protection against double jeopardy is a question of law subject to free review. State v. Santana, 135 Idaho 58, 63, 14 P.3d 378, 383 (Ct. App. 2000).

C. Baker’s Claim Fails Under The Facts And The Law

“The Double Jeopardy Clause of the Fifth Amendment, applicable to the States through the Fourteenth, provides that no person shall ‘be subject for the same offence to be twice put in jeopardy of life or limb.’” Brown v. Ohio, 432 U.S. 161, 164 (1977) (quoting the Fifth Amendment). “[T]wo offenses are the same unless each requires proof that the other does not.” Id. at 168. Double jeopardy

is not implicated “if the charges are for distinct crimes rather than inseparable parts of a single criminal episode,” and therefore “the court must make a factual inquiry as to whether the crimes were parts of one continuing event or transaction.” State v. Moad, 156 Idaho 654, 659, 330 P.3d 400, 405 (Ct. App. 2014). Convictions for “separate, distinct and independent crimes” do not violate the double jeopardy prohibition. Id.

Here the district court’s factual findings that the different charges were significantly different in time, location and nature (3/4/16 Tr., p. 14, L. 1 – p. 15, L. 6) support the conclusion that there were two separate acts of eluding, which were separate, distinct and independent crimes (3/4/16 Tr., p. 15, L. 18 – p. 16, L. 7). Because they were separate, distinct and independent crimes, the district court correctly concluded that charging, trying and convicting Baker of the Ada County felony after he pled guilty to the Elmore County misdemeanor did not implicate, much less violate, double jeopardy protections.

Baker contends the district court erred because it “did not consider Mr. Baker’s intent and objective,” and claims that because he was continually trying to “avoid the police” he committed a single continuing crime of eluding. (Appellant’s brief, pp. 8-10.) This contention is not supported by the record or the applicable law.

First, the district court reasoned that because Baker was not being pursued, and therefore not eluding police, for a substantial time after officers ended the initial pursuit in Ada County, the Ada County eluding was “a completed eluding event” and the act of eluding officers in Elmore County much later was a

separate act of eluding. (3/4/16 Tr., p. 13, L. 7 – p. 15, L. 6.) In doing so, the district court specifically considered Baker’s testimony that he perceived himself as being pursued the entire time, but rejected it because it was “not a reasonable or objective view of what was happening.” (3/4/16 Tr., p. 13, L. 25 – p. 14, L. 17.) The record shows that, contrary to Baker’s appellate argument, the district court did consider Baker’s claimed intent and objective, but rejected Baker’s claim that he reasonably believed he was engaged in a continuous act of eluding.

Second, the law also supports the district court’s analysis. The relevant legal standard “requires an inquiry into the circumstances of the conduct and consideration of the “intent and objective of the actor.”” Moad, 156 Idaho at 660, 330 P.3d at 406 (quoting State v. Bush, 131 Idaho 22, 34, 951 P.2d 1249, 1261 (1997) (quoting State v. Major, 111 Idaho 410, 414, 725 P.2d 115, 119 (1986))). Under this standard, a crime that follows a “concluded” or “completed” crime is “separate and independent.” Id. at 661, 330 P.3d at 407. Here the district court rejected the defendant’s claim there was an ongoing eluding of pursuing officers and factually found there was a “completed eluding event,” followed by a second eluding, different in time, location and nature from the completed first eluding crime. (3/4/16 Tr., p. 13, L. 7 – p. 15, L. 6.) The district court correctly concluded that Baker’s ongoing desire to avoid capture did not prevent his first eluding act from becoming a completed crime, followed by a new eluding crime of a different nature committed at a later time and location.

Baker argues he committed a single act of eluding because he was at all times motivated by the same desire to avoid the police, and therefore stopping at

the side of the road after the police broke off their pursuit was also “eluding.” (Appellant’s brief, p. 9.) The district court rejected this claim because it was not objectively reasonable to believe that Baker was fleeing an audible or visual signal to stop when he was on the side of the road, that the first eluding crime was completed once the officers broke off pursuit, and that the second eluding was separated by time, place and manner of commission. (3/4/16 Tr., p. 2, L. 9 – p. 16, L. 7.) Baker has failed to show factual or legal error in the district court’s ruling.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of conviction.

DATED this 4th day of November, 2016.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 4th day of November, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd